

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
4:13-CR-40-D

UNITED STATES OF AMERICA)	
)	
v.)	ORDER OF DETENTION PENDING
)	TRIAL
GEORGE HENRY MIDGETTE,)	
)	
Defendant.)	

This case came before the court today for hearing on the government's motion, pursuant to 18 U.S.C. § 3142(f), to detain defendant pending trial. The government presented the testimony of an agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives. Defendant presented the testimony of the proposed third-party custodian, his mother, and proffered a character letter from a cousin of defendant. The court also reviewed the pretrial services report. After careful consideration pursuant to 18 U.S.C. § 3142(g) of the credible information and argument submitted, and based on the findings and reasons stated below and in open court, the court finds by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure defendant's appearance as required or the safety of any other person and the community before trial if defendant is released. The government's motion is therefore GRANTED.

Background

Defendant was charged in a two-count indictment on 4 June 2013 with: possession of a firearm by a felon in violation of 18 U.S.C. § 922(g) (ct. 1); and possession of a firearm with an altered serial number in violation of 18 U.S.C. § 922(k) (ct. 2). The alleged offense date in each count is 15 June 2011. The evidence presented at the hearing showed that the charges arise from

recovery of a firearm from a room where defendant apparently was staying, which also contained personal effects of his. He attempted to flee from the state magistrate's office following his arrest and explained that he wanted officers to shoot him so that he would not have to go back to prison since he knew he faced an extended term of imprisonment if convicted.

Discussion

The law requires that defendant be detained pending trial based on the following principal findings and reasons: evidence showing that the government has a strong case, including the evidence reviewed above; the gun-related nature of the offenses charged; the circumstances of the offenses charged, including his commission of the alleged offense while on both federal supervised release for possession of a firearm for a felon and state pretrial release for possession of a firearm by a felon, his attempted flight, and the potential sentence he faces (including the enhanced penalties for armed career offenders); defendant's criminal record, including 8 felony convictions (4 for possession of a firearm by a felon), 21 misdemeanor convictions, 2 probation revocations, and commission of all but 3 of his offenses while on probation or supervised release; the danger of continued gun-related offense conduct by defendant if released; the unsuitability of the proposed third-party custodial arrangement due to defendant's participation in offense conduct over an extended period when residing in the proposed custodial home, the presence of a minor in the home, and the extent of the risk of flight and danger presented by defendant; and the other findings and reasons stated in open court.

The court considered evidence offered as mitigating. It finds, however, that the factors favoring detention strongly outweigh such evidence.

Conclusion

IT IS THEREFORE ORDERED that defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

This, the 25th day of June 2013.


James E. Gates
United States Magistrate Judge